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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 448/2014**

RAM NIWAS YADAV Petitioner
Through: Mr. Pardeep Kumar, Advocate with
Petitioner in person.

Versus

STATE (GOVT. OF NCT) & ANR. Respondents
Through: Mr. Ravi Nayak, Additional Public
Prosecutor for State
Ms. Jaya Tomar, Advocate for
Respondent No. 2/SBI.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **30.10.2017**

1. The petitioner has invoked the revisional jurisdiction of this Court for setting aside order dated 26.07.2014 of the Ld. ASJ, Dwarka Courts, New Delhi dismissing his appeal against the judgment/order of sentence of the Ld. M.M., Dwarka Court, Delhi vide orders dated 21.10.2013 and 25.10.2013. The petitioner was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 2002 ("NI Act") and was sentenced to undergo SI for six months u/s 138 NI Act and to pay a compensation of Rs.30,000/- to the complainant within 30 days. While finding no need to interfere with the judgment and conviction dated 21.10.2013, the Ld. ASJ reduced the compensation payable to the complainant to Rs.22,352/-.

2. Section 138 of the Negotiable Instruments Act, 1881 (“NI Act”) has three main ingredients:-

- i) That there is legally enforceable debt;
- ii) That the cheque was drawn from the account of bank for discharge in whole or in part of any debt or other liability which presupposes a legally enforceable debt and
- iii) That the cheque so issued had been returned due to insufficiency of funds.

3. On the question of whether the cheques were issued against any liability in order to satisfy the essential requirements of Section 138, the Ld. ASJ observed the following:-

“9. Ld. Counsel for the appellant has argued that cheque was not issued against any liability and section 138 is not attracted in this case. I have considered the evidence on record adduced before the Ld. Trial court. CWI Harbans Singh has stated in his examination in chief that the accused approached for loan and he was sanctioned and disbursed a sum of Rs.3,85,000/- which was to be repaid in 48 equated monthly installments of Rs.11,176/- each. He has further deposed that for repayment of said loan amount and for discharge of his partial liabilities, respondent/accused had issued cheque no.106793 dated 30.4.2010 for Rs.11,176/- which was returned unpaid due to funds being insufficient. The cheque is Ex.CWI/B and cheque return memo is Ex.CWI/C. In cross examination no suggestion/question has been put to CWI by the Ld. Counsel for the accused/appellant that the cheque in question was not issued towards part liability of the accused. On the other hand, the accused who examined himself as DWI has himself admitted that he had taken loan of Rs.3,85,000/- from the

complainant bank. He also admitted having issued the cheque in question to the bank. He further admitted that the cheque loan was to be repaid in EMI of Rs.11176/- each. He further admitted that his loan account is running regularly and he is making the payment regularly. Considering the evidence on record of CWI as well as DWI, it is emphatically clear that the present cheque of Rs.11176/- bearing no. 106893 was issued by the appellant/accused towards part payment of his liability. Therefore, submission of Id. Counsel for the appellant is not well founded.”

4. Considering the evidence on record as well as the aforementioned detailed observations of the Ld. ASJ, this Court is unable to agree with the petitioner’s argument that the cheques were issued without any liability therefore, their dishonour would not attract punishment under section 138 of the NI Act.

5. Regarding the question of the applicability of the judgment in **Venkatesh Dutt vs. Shoes East Ltd. 2004 CriLJ 1695**, passed by this Court, there is no reason to differ with the impugned order, which reasoned that:

“10. Another contention of the Ld. Counsel if matter has been compromised the penal liability is not initiated. In the present case order sheet dated 3.3.2014 indicate that compromise was effected between the appellant and R2 on 12.4.2012. But it was informed by the Ld. Counsel for the complainant that the terms & conditions of the said compromise has not been complied with by the appellant. It is seems that the appellant has compromised the matter of this case just to linger on the process and he is not serious about the compromise since he has not complied the terms of the case. Thus the said compromise is of no use.

Considering these facts, I am of the view that the case law Venkatesh Dutt Vs. Shoes East Ltd., relied upon by the Ld. Counsel for the accused/appellant, with due respect, is not applicable to the present facts and circumstances of the case.”

6. On the question of whether the present case is fit to be given the benefit of probation under the Probation of Offenders Act, 1958, this Court is not persuaded by the petitioner’s submissions in the petition. The context of the offence and the reasoning in the impugned order do not call for any interference. It had considered the request for probation and rejected it as under: -

“12. The present case has been filed u/s 138 NI Act by State Bank of India. The money in banks is a public money at large. If the said money is not paid in time, the economy of the country will suffer setback. The present appellant/accused had taken the loan and used the money but when his turn came to repay the said, he did not abide by the same and even did not obey the terms and conditions of the compromise. The cases u/s 138 NI Act are increasing day by day and it is the time to deal with the offenders with strong hands. In consideration of the allegations against the convict/appellant in the present case, I am of the view that he is not entitled to be given the benefit of probation.”

7. This Court agrees with the aforementioned observations of the Ld. ASJ and keeps in mind the disinclination of the petitioner to abide by the terms of the compromise in returning public monies owed to a public sector bank. Additionally, the facts of the case show that the petitioner is a repeat offender. For this reason, the decisions in **Chandreshwar Sharma vs. State**

Of Bihar (2000) 9 SCC 245, Gulzar vs. State Of M.P. (2007)1 SCC 619, Reepik Ravinder vs. State Of Andhra Pradesh, 1991 CRI.L.J 595 (Andhra Pradesh High Court) are of no relevance or persuasive value as this case is not fit to derive the benefit of probation under the Probation of Offenders Act, 1958.

8. For the aforementioned reasons, this Court finds no need to interfere with the order of the Ld. ASJ, Dwarka Courts, New Delhi, dated 26.07.2014, which has upheld the conviction and sentencing of the petitioner.

9. Hence, the petition is dismissed.

NAJMI WAZIRI, J.

OCTOBER 30, 2017

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